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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/007,002	11/30/2001	Michael Neal	DEM1P009	9261

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EXAMINER

RUHL, DENNIS WILLIAM

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 04/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/007,002	NEAL ET AL.	
	Examiner	Art Unit	
	Dennis Ruhl	3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,9-11 and 14-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,9-11 and 14-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/12/06 has been entered.

Currently claims 1-6,9-11,14-19 are pending. Applicant's arguments will be addressed at the end of this office action.

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-6,9-11 are rejected under 35 USC 101 because the claimed invention is directed to non-statutory subject matter.

Due in part to the 112,2nd paragraph rejection, the examiner believes the claims are directed to non-statutory subject matter because the claims are directed to "a storage media" that can be a "data signal embodied in a carrier wave" (i.e. a data signal). See page 4 of the instant specification where this is specifically disclosed. A signal does not fall into any one of the allowable statutory classes of invention. A signal is not an apparatus or an article of manufacture because a signal is not a real world tangible thing. A signal is not a method because a signal itself does not do anything.

There is no statutory class of invention that a signal claim would fall into. The claims are directed to non-statutory subject matter for this reason.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-6,9-11,14-19, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For claim 1, it is not clear what is being claimed. The preamble states that an apparatus is being claimed; however, there is nothing recited in the body of the claim about an apparatus or anything structural that could be considered to be an apparatus. It is not clear if the apparatus is the "storage media" or if the apparatus has the storage medium as part of its structure (which means nothing about the apparatus has been claimed). What is the apparatus? The examiner does not see where any structure has been claimed that would constitute an apparatus. As the claim is best understood by the examiner, it appears that it is only directed to a "storage media", and because this can be a data signal, the examiner questions what the "apparatus" actually is. The scope of the claim is not clear and it is considered to be indefinite.

For claims 6,11,19, what is "price bound data" or "new bound data"? What does this refer to and what is the scope of this term? Data is data, what you call it may or

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may not mean anything and in this case it is not clear to the examiner what this means and what the scope of this term is. This is still unclear.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-6,9-11,14-19, are rejected under 35 U.S.C. 102(b) as being anticipated by Reuhl et al. (5873069).

For claims 1,14, Reuhl discloses a method and system where sales and price data is entered into a computer system and the system then “optimizes” the prices of numerous products based on the inputted sales data. The software has criteria (rules) for figuring out the final pricing of the products. The rules include looking for sales prices, advertised prices, etc., as well as applying a cent code to the resulting lowest price, and then checking to ensure that the new active price with the cent code is not greater than the competitor price. If the new price with the cent code results in the price being higher than the competitor price, then a new active price is calculated by incrementally relaxing the cent code rule. If the calculated price for a given item(s) is \$4.53, and the cent code rule requires the item to end in a 9, the price is changed to 4.59 in accordance with the cent code rules. Then the system compares the price of \$4.59 to the competitor’s price to ensure that a higher priority rule (lowest price) is

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feasible. If \$4.59 is not the lowest price, 10 cents is subtracted to arrive at a new price, which is \$4.49 (relaxing the cent code rule that stated the price should end in 9, namely from \$4.53 to \$4.59). The incrementally relaxing of the rule results in the price changing from \$4.59 to \$4.49. This is done in increments of 10 cents at a time. The rules are prioritized as claimed because the rules for figuring out prices look to various conditions and moves on to other conditions if prior conditions are not feasible (result in the price being higher than the competitor). The storage medium of claim 1 is disclosed in column 3, lines 29-32. The steps of storing initial prices are satisfied because at some point you must input some kind of price into the system. This is inherent. Reuhl discloses code for designating a subset of products to optimize prices for. This is because the computer system (software) only optimizes prices for products that have had new sales data entered into the system. So if sales data for televisions is updated in the system, the prices for batteries will not be changed. The examiner encourages applicant to read the entire patent to Reuhl, but also refers applicant to the following sections of particular relevance to the claimed invention. See column 6, lines 29-44; col. 7, lines 23-39; col. 8, lines 12-27; col. 10, lines 28-32; col. 11, and lines 26 to column 12, line 52.

For claims 2,15, the "N" products are the number of products that the new sales data relates to. N can be the number of televisions that prices are being optimized for.

For claim 3,16, Reuhl results in prices for items that are optimized for profit. The intent of the price determination system and method is to make money. Ensuring that your prices are not higher than competitor's prices, you are optimizing prices to make a profit.

For claims 6,11,19, due to the 112,2nd paragraph problems noted by the examiner, as the claims are best understood by the examiner, Reuhl discloses the claimed invention. Reuhl calculates prices that are updated, which is new price data.

For claims 4,9,17, with respect to "initial prices", once you run an optimization routine, the very last price prior to the optimization is the "initial price". Reuhl discloses what is claimed.

For claims 5,10,18, the examiner considers it inherent that the system of Reuhl has "code for providing new data". This can be interpreted to be the software drivers that are used in computers to allow data transfer. This could be a modem driver, a keyboard driver, etc.. Anything that allows or assists in the taking in or transmitting or processing of data reads on what is claimed.

Response to Arguments

7. Applicant's arguments filed 6/14/05 have been fully considered but they are not persuasive.

With respect to the 112,2nd rejection for claims 6,11, and 19, it is not clear what the recitation of "price bound data" or "new bound data" means. The examiner has read the cited portion of the specification but page 28, lines 5-11 do not make any mention of "price bound data" or "new bound data". Because the portion of the specification applicant has relied upon does not clarify the issue, the argument is non-persuasive. No other explanation has been provided other than the reference to page 28, lines 5-11.

With respect to the 102 rejection, the arguments are non-persuasive.

With respect to the position by applicant that “incrementally relaxing” a rule is totally different than ignoring a rule, the examiner disagrees. From the example in the specification on pages 22-26, rule #6 states that different flavors of the same item are priced the same. In the example, applicant states that the different flavors are to have different prices by 10%. Rule #6 says the prices are to be the same, and if you have the prices different by 10%, you are not following the rule that says they are to be the same. Relaxing the rule by not following the rule is the same thing as ignoring the rule. The other example of relaxing or ignoring a rule is the ignoring of rule #5. Rule #5 says that prices are to be within 2% of the price of a competitor. On page 25, applicant states that the prices are within 20% of the price of the competitor. The rule specifies no more than 2% and applicant is allowing a 20% difference. That is quite a change from 2% to 20% and is more or less the same thing as ignoring a rule. In the opinion of the examiner, relaxing a rule is the same as ignoring a rule. You either follow a rule or you do not.

With respect to the Reuhl reference, it is disclosed that rules are incrementally relaxed. As an example, if the calculated price for a given item(s) is \$4.53, and the cent code rule requires the item to end in a 9, the price is changed to 4.59 in accordance with the cent code rules. Then the system compares the price of \$4.59 to the competitor's price to ensure that a higher priority rule (lowest price) is feasible. If \$4.59 is not the lowest price, 10 cents is subtracted to arrive at a new price, which is \$4.49 (relaxing the cent code rule that stated the price should end in 9, namely from \$4.53 to

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\$4.59). The incrementally relaxing of the rule results in the price changing from \$4.59 to \$4.49. This is done in increments of 10 cents at a time.

The arguments traversing the Reuhl reference are non-persuasive for the above reasons.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 571-272-6808. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DENNIS RUHL
PRIMARY EXAMINER